

APPENDIX B

FACT GATHERING—USE OF CHECKLISTS

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I. OBJECTIVES CHECKLIST

To determine client's main objectives for estate plan and the relative importance of each of these objectives.

A. Objectives for Client and Client's Spouse

1. Personal care during disability or old age.
2. Managing assets during disability or old age.
3. Securing advice for current management of assets.
4. Minimizing current income taxes.
5. Arranging for guardians for any of the client's minor children.
6. Arranging for disposition or continued management of family business after disability, retirement or death.
7. Changing residence to another jurisdiction—double domicile problems.
8. Making gifts to family members.
9. Establishing asset management for children.
10. Providing financial care for client's parents.
11. Insuring that family assets remain in family.
12. Making gifts to charities.
13. Purchasing additional life insurance.
14. Purchasing insurance to supplement income in case of disability.
15. Concern for health care decisions if gravely ill.
16. Concern for funeral arrangements and donation of bodily organs.
17. Minimizing estate and inheritance taxes and administration expenses at death.

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B. Objectives under Client's Will

1. Selection of executor, trustee and successor fiduciaries.
2. Disposition of valued personal effects to spouse.
3. Disposition of valued personal effects to children, other family members or friends.
4. Authorizing spouse to make gifts to other family members during spouse's lifetime.
5. Authorizing spouse to make gifts to other family members under spouse's will.
6. Protecting assets left to spouse or child from present or future creditors.
7. Reduction of estate taxes at client's death regardless of estate tax consequences at death of surviving spouse.
8. Arranging for care of child with mental or physical handicap.
9. Arranging for care of parent or other family member.
10. Selection of guardian for minor children.
11. Arranging for the retention of the family home for the surviving spouse and the children.
12. Arranging for disposition of any professional practice assets.
13. Dispositions to any charity.
14. No contest clause.

C. Objectives under Power of Attorney

1. Enable attorney-in-fact to act for the client should the client become disabled, or for any other reason.
2. Enable attorney-in-fact to make tax-free gifts of up to \$13,000 per year for each intended donee.
3. Allow attorney-in-fact to make unlimited tax-free gifts for medical and tuition expenses for each intended donee.
4. Empower the attorney-in-fact to act concerning all tax matters for the client.
5. Enable the attorney-in-fact to pay for all health care expenses for the client.
6. Enable the attorney-in-fact to create or modify a revocable trust for the client.
7. Enable the attorney-in-fact to transfer client's assets to client's revocable trust.
8. Enable the attorney-in-fact to deal with retirement plans and IRAs.
9. Enable the attorney-in-fact to act concerning all business matters for the client.

II. DOCUMENT CHECKLIST

To determine availability of relevant data.

A. Information Regarding Client

1. Current will and codicil.
2. Trust agreements— which client has created or under which the client may be a beneficiary.
3. Powers of attorney.
4. Naturalization papers.
5. Pending litigation papers.
6. Pre- or postnuptial agreements.
7. Divorce decree or separation agreement.
8. Military discharge papers.
9. Adoption papers regarding client or client's family members.
10. Health care proxy.
11. Living will.

B. Property Interests

1. Savings accounts and passbooks.
2. Personal financial statements.
3. Appraisals or documents evidencing ownership of fine arts, jewelry, antiques, furs, or other valuables.
4. Promissory notes and mortgages.
5. Inventory of stocks, bonds and securities.
6. Safe-deposit box or private safe.
7. Copyrights, trademarks and patents.
8. Royalty agreements.
9. Deeds to current residence and other real estate.
10. Title insurance policies.

11. Proprietary lease and stock certificate for cooperative apartment.
12. Employee benefit statements.
13. Loans and debts owed to client.
14. Loans and debts owed by client.
15. Custodian accounts established under New York Uniform Transfers to Minors Act.¹

C. Life Insurance

1. All policies owned by client or client's spouse.
2. All policies owned by client or spouse insuring someone else's life.
3. Premium notice regarding insurance policies.
4. Summary statement of client's insurance program prepared by insurance agent.

D. Other Insurance

1. Homeowner's policy.
2. Tenant's policy.
3. Floater or fine arts policy.
4. Automobile policy.
5. Health, hospitalization and major medical policies.
6. Disability income insurance.
7. Long-term care insurance.
8. Umbrella (excess liability) policy.
9. Malpractice insurance.
10. Annuity contracts.
11. Fraternal benefits.

E. Business Interests

1. Agreements concerning joint ventures.
2. Partnership agreements.

¹ See EPTL 7-6.1 to 7-6.26.

3. Shareholders' agreements.
4. Stock redemption agreements.
5. Life insurance incident to an agreement.

F. Tax Returns

1. Copies of state and federal income tax returns for past three years.
2. Copies of state and federal gift tax returns that have been filed.
3. Copies of estate tax returns for those estates in which the client has received any interest.

III. FACT-GATHERING CHECKLIST

Provides starting point for preparing and organizing estate plan and assists in four phases of estate planning process: (1) ascertaining facts, (2) analyzing facts, (3) formulating plan, (4) implementing plan.

Checklist also reveals problem areas not obvious to the client:

1. Insufficient life, medical, liability, long-term care or disability insurance coverage.
2. Need for more liquidity to meet estate tax obligations.
3. Forgotten obligations created under existing agreements.
4. Need for durable general power of attorney.
5. Need to secure appointment for guardian and standby guardian for mentally retarded or developmentally disabled child, pursuant to SCPA Article 17-A.
6. Need for designation of successor custodian pursuant to EPTL 7-6.18 to obviate need for court proceeding if custodian dies before minor attains majority.
7. Death of nominated fiduciaries and intended beneficiaries.

A. Ascertaining Facts

1. Personal data—client.
 - a. Name.
 - b. Address.
 - i. Home.
 - ii. Business.

- c. Phone.
 - i. Home.
 - ii. Business.
- d. Social security number.
- e. Aliases, nicknames, surnames.
- f. Date and place of birth.
- g. Citizenship.
- h. Other residences.
- i. Marital status.
- j. Date and place of marriage.
- k. Pre- or postnuptial agreement.
- l. Prior marriages.
 - i. Date and place.
 - ii. How terminated.
 - (a) Certified copies of decrees or judgments.
 - (b) Potential obligations surviving death.
- m. Date of adoption, if applicable.
- n. Occupation.
- o. Employer.
- p. If retired, former occupation and employer.
- q. Military service—branch, grade, serial number.
- r. Health problems, if any.
- s. Location of safe-deposit box.
- t. Resided with spouse in community property states?
 - i. Community property jurisdictions: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington.

- ii. Potential problems—decisions in common law jurisdictions showed no consistent pattern regarding disposition of property which was community property or derived from community property.
 - iii. *Uniform Disposition of Community Property Rights at Death Act, Uniform Laws Annotated*, Master Edition, Volume 8A, 1-13, adopted by Colorado (1973), Hawaii (1973), Oregon (1973), Kentucky (1974), Michigan (1975), North Carolina (1981), New York (1981), Arkansas (1981), Virginia (1982), Alaska (1984), Connecticut (1985), Wyoming (1985), Montana (1989), and Florida (1992).
 - iv. New York law—EPTL 6-6.1 to 6-6.7 codifies this act; cannot dispose of surviving spouse's share of the community property; deceased spouse's interest in community property is not subject to right of election; step-up in basis of value of all community property.
2. Personal data—client's spouse.
 3. Personal data—client's children.
 - a. Adopted children.
 - i. Formal adoption.
 - ii. Equitable adoption.
 - b. Nonmaritals.
 4. Family tree of client and spouse.
 - a. Client may die residing in, or owning real estate in, jurisdiction with solemn form of probate.
 - b. Indicates client's natural objects of bounty and prospective fiduciaries.
 - c. May be required at client's death—for example, see Uniform Rules for Surrogate's Court § 207.16(c).
 5. Assets, type of ownership and location.
 - a. Personal property.
 - i. Collectibles.
 - ii. Antiques.
 - iii. Works of art.
 - iv. Furs and jewelry.
 - v. Coin or stamp collection.
 - vi. Furnishings.

- vii. Motor vehicles.
- viii. Library.
- ix. Pets.
- x. Guns.
- xi. Professional practice assets.
- xii. Electronic equipment.
- xiii. Computers.
- b. Cash and cash equivalents.
 - i. Savings accounts.
 - ii. Checking accounts.
 - iii. Time deposits.
 - iv. “In trust for” accounts.
 - v. Money market accounts.
 - vi. Treasury bills.
 - vii. Credit union accounts.
 - viii. Cash hoards.
- c. Securities.
 - i. Stocks.
 - ii. Tax-exempt bonds.
 - iii. Corporate bonds.
 - iv. U.S. Treasury securities.
 - v. Custody management accounts.
 - vi. Savings bonds.
 - vii. Investment management accounts.
 - viii. Promissory notes and mortgages.

- d. Life insurance, annuities and employee benefits.
 - i. Face amount of life and group insurance owned on self.
 - ii. Face amount of life and group insurance owned on others.
 - iii. Stock options and restricted stock awards.
 - iv. Deferred compensation.
 - v. Post-death salary.
 - vi. Vested pension rights and profit-sharing plans.
 - vii. Employee benefit plan statements, summary plan statements and employment literature to determine other benefits.
 - viii. IRA.
 - ix. 401(k) and other retirement plans.
- e. Business interests.
 - i. Proprietorship.
 - ii. Professional practice.
 - iii. Closely held business interests.
 - iv. Tax shelters.
 - v. Joint ventures.
 - vi. Partnership interest.
 - vii. LLC, LLP and other limited liability entities.
 - viii. Royalties.
 - ix. Commissions.
- f. Real estate.
 - i. Principal residence.
 - ii. Vacation residence.
 - iii. Other residences.
 - iv. Undeveloped property.

- v. Farm land.
 - vi. Oil, gas and mineral interests.
6. Liabilities.
- a. Judgments.
 - b. Bank loans.
 - c. Promissory notes.
 - d. Accounts payable.
 - e. Pledges.
 - f. Secured loans.
 - g. Unsecured loans.
 - h. Accrued taxes.
7. Advisors.
- a. Physician.
 - b. Life insurance agent.
 - c. Casualty insurance broker.
 - d. Accountant.
 - e. Attorney.
 - f. Investment advisor.
 - g. Securities custodian.
 - h. Banker.
 - i. Clergyman.

B. Analyzing Facts

C. Formulating Plan

1. Unlimited marital deduction—shifting ownership of assets.
2. Gift giving to reduce taxable estate and reduce income generated from those assets.

3. Consider splitting assets to take advantage of applicable exclusion amount and generation-skipping tax exemption.
4. Joint ownership of property in other jurisdictions to avoid ancillary proceedings.
5. Consider purchasing additional life insurance to meet anticipated estate tax obligations.
6. Use of durable power of attorney as estate planning tool.
7. Consider relevancy of health care proxy, living will and HIPAA authorization form.
8. Determine if client has charitable intentions and discuss vehicles for making charitable dispositions, if applicable.
9. Establish a revocable trust for asset management during lifetime and after death.
10. Establish an irrevocable insurance trust to use as a gift-making vehicle.
11. Review and update, if necessary, beneficiary designations for IRAs, 401(K) plans and other retirement plans.
12. Estate planning with increasingly more emphasis on lifetime planning.
13. Tailor plan to meet client's objectives.